

Proposed Changes to Utah Underground Storage Tank Rules

Draft- for stakeholder comments. 10/6/03. Explanations of the proposed changes are italicized.

General- Several changes are made throughout the rules to improve punctuation and grammar, correct law, rule, and regulation citations, and be more correct and consistent in rule text formatting. Other changes are made to clarify the wording. The meaning remains the same, but the text is revised to be easier to read and understand.

R311. Environmental Quality, Environmental Response and Remediation.

R311-206. Underground Storage Tanks: Financial Assurance Mechanisms.

R311-206-1. Definitions.

Definitions are found in ~~[Section]~~Rule R311-200.

R311-206-2. Declaration of Financial Assurance Mechanism.

(a) To demonstrate financial assurance, as required by 40 CFR 280, subpart H, owners ~~[and]~~or operators of petroleum storage tanks shall:

- (1) meet all requirements for participation in the ~~[e]~~Environmental ~~[a]~~Assurance ~~[p]~~Program, or
- (2) demonstrate financial assurance by an allowable method specified in 40 CFR 280, subpart H.

(b) As specified in ~~Subsections~~ 19-6-428(1) and (2), owners ~~[and]~~or operators shall submit a completed Financial Responsibility Declaration to declare whether they will participate in the Environmental Assurance Program under Section 19-6-410.5, or show financial assurance by another method.

(c) For the purposes of ~~Subsection~~ 19-6-412(6), all tanks at a facility shall be covered by the same financial assurance mechanism, and shall be considered to be in one area, unless the Executive Secretary determines there is sufficient information so that releases from different tanks at the facility could be accurately differentiated.

~~[(d) Owners and operators who show financial assurance by a method other than the Environmental Assurance Program shall submit with the Financial Responsibility Declaration, the name of the person authorized by the owner or operator to demonstrate financial responsibility.]~~

R311-206-2(d). This requirement is removed because the financial assurance documents submitted by the owner/operator generally include the name of the individual responsible for showing financial responsibility.

R311-206-3. Requirements for Issuance of Certificates of Compliance.

(a) The Executive Secretary shall issue a certificate of compliance to an owner~~[s]~~ or operator~~[s]~~ participating in the ~~[e]~~Environmental ~~[a]~~Assurance ~~[p]~~Program for individual petroleum storage tanks at a facility if:

- (1) the owner or operator has a certificate of registration;
- (2) the petroleum storage tank fee has been paid;
- (3) the tank is substantially in compliance with all state and federal statutes, rules and regulations;
- (4) the UST test, conducted within 6 months before the tank was registered or within 60 days after the date the tank was registered, indicates that each individual UST is not leaking;
- (5) the owner or operator has submitted a letter to the Executive Secretary stating that based on customary business inventory practices standards there has been no release from the tank; and~~[-]~~
- (6) the owner or operator has submitted a completed application according to a form provided and approved by the Executive Secretary.

(b) The Executive Secretary shall issue a certificate of compliance to an owner~~[s-and]~~ or operator~~[s]~~ who elects to demonstrate financial assurance by a method other than the ~~[e]~~Environmental ~~[a]~~Assurance ~~[p]~~Program for individual petroleum storage tanks at a facility if:

- (1) the owner or operator has a certificate of registration;

- (2) the processing fee assessed by Subsection 19-6-408(2) has been paid;
- (3) the tank is substantially in compliance with all state and federal statutes, rules and regulations;
- (4) the UST test, conducted within 6 months before the tank was registered or within 60 days after the date the tank was registered, indicates that each individual UST is not leaking;
- (5) the owner or operator has submitted a letter to the Executive Secretary stating that based on customary business inventory practices standards there has been no release from the tank; and[;]
- (6) the owner or operator has met the requirements of 40 CFR 280, subpart H and has demonstrated acceptable financial assurance. The Certificate of Compliance shall not be issued until the financial assurance documents submitted for review have been approved.

R311-206-4. Requirements for Environmental Assurance Program participants.

(a) To meet the requirements of Subsections 19-6-411(1)(a)(ii) and [~~Section~~]19-6-411(1)(b)(ii) the owner or operator shall submit:

(1) A letter to the Executive Secretary stating that the facility is not engaged in petroleum production, refining, or marketing, and

(2) Evidence, each fiscal year, of average annual throughput less than 10,000 gallons per month based on current inventory records.

(b) In accordance with Subsection 19-6-411(1)(c), the annual facility throughput rate, if reported, shall be reported to the Executive Secretary as a specific number of gallons, based on the throughput for the previous calendar year.

(c) In accordance with Subsection 19-6-411(1)(d), when a petroleum storage tank is initially registered with the Executive Secretary, any Petroleum Storage Tank fee for that tank for the current fiscal year shall be due when the tank is brought into use, as a requirement for receiving a Certificate of Compliance.

(d) In accordance with Subsection 19-6-411(6), the Executive Secretary may waive all or part of the fees required to be paid on or before May 5, 1997 under Section 19-6-411 if no fuel has been dispensed from the tank on or after July 1, 1991, and if the tank has been properly closed according to Rules R311-204 and R311-205, or in other circumstances as approved by the Executive Secretary.

(e) In accordance with Subsection 19-6-411(2)(a)(i), if an installation company receives its [~~initial~~]annual permit after the beginning of the fiscal year, the annual fee must be paid for the entire year.

(f) Auditing of UST facility throughput records for fiscal year 1998.

(1) Owners and operators shall retain for seven years the monthly tank throughput records of the facility for the months of July 1997 through June 1998. Tank throughput records shall include all financial and product documentation for receipts, dispositions and inventories.

(2) The executive secretary may audit or order an audit, by an independent auditor, of records which support the amount of throughput, for each tank at a participant's facility.

(A) Records shall be made available at the Department for inspection within 30 calendar days after receiving notice from the Executive Secretary.

(B) Audits may be determined by random selection or for particular reasons, including suspicion or discovery of inaccuracies in throughput reports, aggregating throughput reports, having a release, or filing a claim.

(C) Auditing tank throughput may be accomplished by any method approved by the Executive Secretary.

(D) All costs of an independent audit shall be paid by the owner or operator.

(g) Owners or operators eligible for coverage by the Fund shall demonstrate financial assurance for the difference between coverage provided by the Fund and coverage amounts required by 40 CFR 280 Subpart H. If the owner or operator chooses self insurance as the mechanism for demonstrating financial assurance for the difference, the owner or operator must document a tangible net worth of \$10,000 upon request and to the satisfaction of the Executive Secretary. An owner or operator may also select and document another mechanism specified in 40 CFR 280.94 to demonstrate financial assurance for the difference. The processing fee requirement referenced in Subsection R311-206-5(b) is not applicable because the

administrative cost is covered by the PST fund fee. However, the Executive Secretary may require the owner or operator to submit an independent audit to demonstrate net worth for self insurance. The owner or operator shall bear the expense for the audit. The criteria for an audit are the same as set forth in Subsection R311-206-4(f)(2).

R311-206-5. Requirements for Owners and Operators Demonstrating Financial Assurance by Other Methods.

(a) Owners and operators who elect to utilize an alternate form of financial assurance shall use one or a combination of mechanisms specified in 40 CFR 280.94. Owners and operators shall submit to the Executive Secretary the documents required by 40 CFR 280.111 to be kept and maintained for the mechanism used.

R311-206-5(a). Wording is added to specify the financial assurance documents that are to be submitted by owner/operators using alternate (other than the PST Fund) mechanisms to show financial responsibility. 40 CFR 280.111 specifies that the owner/operator will keep certain documents to show acceptable financial responsibility, but the federal regulations do not require that the o/o submit these documents to the implementing agency on a regular basis.

(1) Formats, calculations, letters, reporting, and record keeping shall be done in accordance with each applicable financial assurance mechanism specified in 40 CFR 280 subpart H.

(2) If the financial assurance documentation submitted to the Executive Secretary is not in accordance with 40 CFR 280 subpart H, it shall be rejected and ~~[will]~~shall be invalid.

(b) The processing fee established in Subsection 19-6-408(2)(a) for each new or changed financial assurance document submitted for approval shall be included with the financial assurance document and shall be payable to the Department. Processing fees for subsequent yearly review of a financial assurance document shall be due on July 1 annually.

R311-206-5(b). Wording is added to specify when the yearly processing fee payments are due- July 1 of each fiscal year. There is currently nothing in the rules or the UST Act to specify when the yearly mechanism review fees are due.

(1) Pursuant to 40 CFR 280.97, if the financial assurance mechanism is an insurance policy, the insurer is liable for payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with right of reimbursement by the insured for such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.95-280.10[2]Z. A showing of financial assurance for the deductible, if such a showing is made, shall be treated as a separate financial assurance mechanism subject to the processing fee requirement referenced in ~~[Subpart]~~Subsection R311-206-5(b) above.

(2) If an owner or operator desires to make any material change to the financial assurance document, the change shall be approved by the ~~[e]~~Executive ~~[s]~~Secretary, and an additional processing fee shall be paid in circumstances as determined by the Executive Secretary.

(c) Evidence of a current and approved financial assurance mechanism shall be reported to the Executive Secretary ~~[at least once yearly as determined by the annual anniversary date or as required by changing to other forms of financial assurance.]~~as follows:

(1) For State fiscal year 1998 evidence of financial assurance for all mechanisms shall be due to the Executive Secretary by June 15, 1997.

(2) Thereafter, proof of ~~[continued]~~financial assurance shall be reported to the Executive Secretary and shall~~[minimally]~~ include:

(A) Owners and operators using either financial test of self insurance shall ~~[report]~~submit the "Letter from Chief Financial Officer" to the Executive Secretary within the maximum 120 day period specified in 40 CFR 280.95.

(B) Owners and Operators using insurance and risk retention group coverage for financial assurance shall ~~[report]~~submit the coverage policy in its entirety, with the current Certificate of Insurance or Endorsement specified in 40 CFR 280.97(b), to the Executive Secretary within 30 days of acceptance of such policy by the insurer or risk retention group.~~[-Each insurance policy must be amended by an endorsement or certificate of insurance that includes the following provisions as additions to the endorsement and certificate of insurance requirements specified in 40 CFR 280.97:~~

~~_____ (i) The insurance covers claims for the cost of corrective action and for compensating third parties for bodily injury and property damage caused by either sudden accidental releases or nonsudden accidental releases or accidental releases which are discovered during the coverage period. For purposes of this rule only, a release is discovered:~~

~~_____ (f) When a leak detection method under 40 CFR 280, subpart 280.43 or 280.44 indicates a release or suspected release, or~~

~~_____ (H) On the date when contamination is revealed at the UST site or in the surrounding area due to UST closure or environmental impacts from the contamination attributable to the UST.]~~

R311-206-5(c)(2)(B). This rule currently requires that the owner/operator using an insurance policy for financial assurance submit a policy endorsement or certificate of insurance which includes two provisions: 1) that the insurance covers a release that is found at the time it occurs by a functioning leak detection method, or is found later by closure or other evidence of contamination on or near the UST site, and 2) that the insurance provider notify the Executive Secretary if the policy is cancelled. The insurance industry has interpreted provision #1 as meaning that they must cover the release no matter when it is found, even if it is found several years after the policy is no longer in effect. Because of this interpretation, the industry has indicated it would stop issuing policies in Utah for UST financial assurance. Policies generally cover releases that occur and are reported within the coverage period or within six months of the end of the coverage period. Because this level of coverage is specified in the federal regulations, the requirement to submit a document with the wording that is currently required is now considered to be unnecessary and is removed. Provision #2 is kept, but is worded as a requirement that the insurance company must meet, rather than something that must be included in the endorsement or certificate of insurance.

~~([†]i) If the insurance policy or risk retention group coverage is cancelled, t[F]he insurer or risk retention group shall provide written notice of cancellation or other termination of coverage required by 40 CFR 280.97(b)(1)2.d. and 40 CFR 280.97(b)(2)2.d. to the Executive Secretary as well as the insured.~~

~~_____ (ii) The insurer shall have a rating of A- or greater by A.M. Best Co.~~

(C) Owners and operators using an irrevocable letter of credit ~~[must]~~shall submit ~~[provide]~~proof of the letter of credit, standby trust fund, and formal certification of acknowledgement to the Executive Secretary within 30 days of issuance from the issuing institution.

(D) Owners and operators using a fully funded trust fund for financial assurance shall ~~[report]~~submit proof of the trust fund and formal certification of acknowledgement to the Executive Secretary within 30 days after implementation of the trust fund.

~~_____ (E) Owners and operators using a guarantee for financial assurance shall submit the Guarantee document, standby trust fund, and certification of acknowledgement to the Executive Secretary within 30 days of issuance. The owner or operator shall also submit the guarantor's letter from chief financial officer within the 120-day period specified in 40 CFR 280.95.~~

~~_____ (F) Owners and operators using a surety bond for financial assurance shall submit the surety bond document, standby trust fund, and certification of acknowledgement to the Executive Secretary within 30 days of issuance.~~

([3]G) Guarantees and surety bonds may be used as financial assurance mechanisms in Utah only if the requirement of 40 CFR Part 280.94(b) is met.

~~(H) Owners and operators using one of the local government methods specified in 40 CFR 280.104 through 107 shall submit the letter from chief financial officer and associated documents to the Executive Secretary within 120 days of the end of the owner/operator's or guarantor's fiscal year.~~

R311-206-5(c)(2)(E), (F), and (H) Wording is added to specify the financial responsibility documents that the owner/operator must submit for guarantees, surety bonds, and the local government financial assurance mechanisms.

~~[(4) If the alternate financial assurance mechanism is an insurance policy, the insurer shall have a rating of A- or greater by A.M. Best Co.]~~

(d) The Executive Secretary may require reports of financial condition or any other information relative to justification of the financial assurance mechanism from the owner or operator at any time. Information requested shall be reported to the Executive Secretary within 30 calendar days after receiving the request.

(1) Owners and operators shall maintain evidence of all financial assurance mechanisms as specified in 40 CFR 280.1[07]11.

(2) Owners and operators shall keep records of all financial assurance mechanisms for a period of three years.

(3) The Executive Secretary may audit or order an audit of records supporting the financial assurance mechanism at any time.

(A) Audits may be determined by random selection or for specific reasons, including the occurrence of a release or suspected release, deficiencies in complying with regulations or orders, or the suspicion or discovery of inaccuracies.

(B) Auditing of financial assurance methods may be accomplished by any method approved by the Executive Secretary.

(e) Any and all costs of securing a selected financial assurance mechanism and generating and providing the necessary reporting evidence of an assurance mechanism to the Executive Secretary shall be the sole responsibility of the owner or operator.

(f) Processing of the alternate financial assurance mechanism documents may be accomplished utilizing any method approved by the Executive Secretary.

R311-206-6. Voluntary Admission of Eligible Exempt Underground Storage Tanks and above-ground storage tanks to the Environmental Assurance Program.

(a) Owners or operators of eligible exempt underground storage tanks specified in Subsection 19-6-415(1)(a) may voluntarily participate in the Environmental Assurance Program by:

(1) meeting the requirements of Subsection 19-6-415(1) and Subsection R311-206-3(a)[-];

(2) properly performing release detection according to the requirements of 40 CFR Part 280 Subpart D[-]; and

(3) meeting the upgrade requirements in 40 CFR 280[-, subpart 280].21 or the new tank requirements in 40 CFR 280[-, subpart 280].20, as applicable.

(b) Owners or operators of above-ground storage tanks may voluntarily participate in the Environmental Assurance Program by:

(1) meeting the requirements of Subsection 19-6-415(2) and Subsection R311-206-3(a)[-];

(2) meeting applicable requirements of the [~~1997 Uniform Fire Code~~]2000 International Fire Code, [~~Articles 52 and 79~~]Chapters 22 and 34, published by the International [~~Fire Code Institute~~]Code Council, Inc.[-];

R311-206-6(b)(2). This rule requires that owner/operators of above ground storage tanks show compliance with applicable sections of the fire code if they want those tanks to be covered by the PST Fund. Because Utah now follows the International Fire Code, references to the Uniform Fire code are replaced with references to the applicable sections of the International Fire Code.

(3) performing an annual line tightness test of all underground product piping, or documenting monthly monitoring of sensor-equipped double-walled underground product piping[-]; and

(4) performing a tightness test of all above-ground tanks every five years, using a tightness test method capable of properly testing the tank.

R311-206-7. Revocation and Lapsing of Certificates.

(a) The Executive Secretary shall revoke a certificate[s] of compliance or registration if he determines that ~~any~~the owner or operator has willfully submitted a fraudulent application or is not in compliance with any requirement pertaining to the certificate.

(b) A~~ny~~ petroleum storage tank owner or operator who has had a certificate of compliance revoked under Section 19-6-414 or Subsection R311-206-7(a) may have the certificate reissued by the Executive Secretary after the owner or operator demonstrates compliance with Subsection 19-6-412~~[-](2)~~, Subsection 19-6-428(3), and Section R311-206-3.

(c) A~~ny~~ petroleum storage tank owner or operator who has had a certificate of compliance lapse under Subsection 19-6-408(5)(c) may have the certificate reissued by the Executive Secretary after the owner or operator demonstrates compliance with Subsection 19-6-412(2) and Section R311-206-3.

(d) A~~ny~~ petroleum storage tank owner or operator who has had eligibility to receive payments for claims against the fund lapse under Section 19-6-411(3)(c)(ii) shall meet the requirements of Subsection 19-6-428(3) and pay all fees, interest, and penalties due to reinstate eligibility.

(e) Upon permanent closure of a tank which is covered by the Fund, the eligibility to make a claim against the Fund shall terminate as specified in Section R311-207-2. Permanently closed tanks are not eligible to be reissued a certificate of compliance.

(f) In accordance with Section 19-6-414, the Executive Secretary may revoke a certificate of compliance for the owner's or operator's failure to comply with 40 CFR 280, which requires release reporting, abatement, investigation, corrective action, or other measures to bring the release site under control.

R311-206-8. Proof of Certification.

(a) ~~A valid certificate of compliance shall be at each tank facility. Where this is not possible, other methods may be approved by the Executive Secretary.~~

~~(b)~~ In accordance with Subsection 19-6-411(7), a tag or other means of identification shall be issued to each petroleum storage tank or underground storage tank which has demonstrated current compliance with Section 19-6-412 and Section R311-206-3 or Section R311-206-6. The tag or other means of identification shall ~~be issued annually and shall~~ be displayed for view of the person delivering or placing petroleum product into an underground storage tank for which the tag was issued.

~~(c)~~ A tank shall not be issued a tag or other means of identification if the owner or operator has not satisfied the requirements of Section 19-6-412. An owner or operator shall not allow a tag to be displayed on a tank for which the Certificate of Compliance has been revoked or has lapsed, or on a tank for which the eligibility to receive payment for claims against the fund has lapsed unless the owner or operator has demonstrated compliance with financial assurance requirements.

R311-206-8(a). Remove the requirement that the certificate of compliance be visible on site at each UST facility. Documentation of compliance is achieved by tank tags, and the requirement that the certificate of compliance be on site is unnecessary.

R311-206-9. Removing Participating Tanks from the Environmental Assurance Program.

(a) At any time after May 1, 1997, owners and operators of petroleum storage tanks who have voluntarily elected to participate in the Environmental Assurance Program may cease participation in the program and be exempted from the requirements described in Section R311-206-4 by:

(1) permanently closing tanks as outlined in 40 CFR 280, subpart G, ~~[Section]~~Rule R311-204, and ~~[Section]~~Rule R311-205, or

(2) meeting the following requirements:

(i) demonstrating compliance with ~~Section~~ R311-206-5, and[-]

(ii) notifying the Executive Secretary at least 60 days before the date of cessation in the program, and specifying the date of cessation.

(b) The fund will not give pro-rata refunds.

(c) For tanks being removed voluntarily from the program, the date of cessation in the program shall be the date on which coverage under the program ends. Subsequent claims for payments from the fund must be made in accordance with Section 19-6-424 and Section R311-207-2.

(d) Owners and operators who voluntarily remove participating tanks from the program shall comply with the requirements of 19-6-428(3) before any subsequent participation in the program.

KEY: hazardous substances, petroleum, underground storage tanks*

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